

## REMARKS

Claims 1, 2, 12-16, 20, 21 and 27-29 are pending in the present application. No new matter has been added by way of amendment. Applicants respectfully request consideration of the claims in view of the following remarks.

### Detailed Action

Applicants acknowledge the receipt of Applicants' response of non-compliant appeal brief, filed on December 14, 2007.

### Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2, 12-16, 20, 21 and 27-29 are rejected under 35 U.S.C. § 102(e) as anticipated by Eenennaam (US 2003/0154513). The Examiner states "Eenennaam discloses methods for the production of transgenic plants comprising the mixed tocotrienols of instant claim 1". The Examiner further states that "[t]he at least 150 ppm mixed tocotrienol concentration of instant claims 1 and 4 and 50 ppm to 500 ppm tocotrienol concentration range of instant claims 20, 27 and 29 are an inherent feature of corn oil (see U.S. Application No. 2002/0151733, table 3). The Examiner additionally states that "[t]he improved tissue quality of instant claims 1 and 20 and oxidative stability of instant claims 2 and 21 are inherent features of tocotrienols (see U.S. Application No. 2002/0108148)."

Applicants respectfully traverse this rejection. Both Eenennaam et al. and the additional references cited by the Examiner, U.S. Application No. 2002/0151733 and U.S. Application No. 2002/0108148, do not disclose the step of "feeding the animal a diet comprising at least 150 ppm mixed tocotrienols" in the context of independent claim 1. Moreover, Eenennaam et al. and U.S. Application Nos. 2002/0151733 and 2002/0108148 do not disclose the step of "feeding the animal a diet comprising 50 ppm to 500 ppm mixed tocotrienols" in the context of independent claim 20.

Independent claims 1 and 20 both require "mixed tocotrienols". "Mixed tocotrienols" is defined in the specification as "any mixture that contains at least three of the four known tocotrienols" and "any mixture of tocotrienols comprising significant quantities of at least three

of the four known tocotrienols". Specification, p. 1, paragraphs [0018], [0021]. Eenennaam et al. and U.S. Application Nos. 2002/0151733 and 2002/0108148 do not teach improving the tissue quality of an animal comprising feeding the animal a diet of mixed tocotrienols.

Eenennaam et al. additionally does not teach a method of improving the tissue quality of an animal comprising feeding the animal a diet of mixed tocotrienols. Nowhere in Eenennaam et al. is there taught an animal diet or transgenic plant which comprises mixed tocotrienols as defined by Applicants' specification. Eenennaam et al. does not present any evidence or data that the transgenic plants disclosed therein contain elevated levels of mixed tocotrienols. Eenennaam et al. discloses data showing elevated levels of tocopherols in the disclosed transgenic plants, but no data or teaching of transgenic plants with elevated levels of mixed tocotrienols. *See, e.g.* Eenennaam et al., Table 5, pp. 33-34 (disclosing plants with altered levels of gamma-tocopherol); Example 4, pp. 36-37; FIG. 34 (comparing the gamma-tocopherol and gamma-tocotrienol levels in plants); Example 7, pp. 39-40 (discussing the tocopherol levels of transformed plants); Examples 8-9 (disclosing the measurement of alpha-, gamma-, and delta-tocopherol levels in transformed plants).

Accordingly, neither Eenennaam et al., or U.S. Application No. 2002/0151733 and U.S. Application No. 2002/0108148, teach a method of improving the tissue quality of an animal, comprising feeding the animal a diet of mixed tocotrienols as defined by Applications' specification. Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e)

### **Double Patenting**

#### *1. Application No. 11/153,463*

The Examiner provisionally rejects claims 1, 2, 12, 13, 14-16, 20, 21 and 27-29 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 11/153,463 ("the '463 application").

Applicants respectfully traverse this rejection. The '463 application does not teach all of the elements of the present invention. Appellants' independent claims 1 and 20 recite a method

of improving the tissue quality of an animal, comprising feeding the animal a diet comprising mixed tocotrienols.

In contrast, the '463 application teaches and claims a method of improving the tissue quality of an animal comprising feeding the animal a diet comprising oleic acid and selected tocols. The "selected tocols" are defined in the '463 application as "one or more of the tocotrienols (TT), gamma-tocopherol (GT) or a mixture of at least one tocotrienol and gamma-tocopherol." '463 Application, p. 1, paragraph [0009]. The '463 application does not teach or suggest a method of improving the tissue quality of an animal comprising feeding the animal a diet of mixed tocotrienols, as required by Appellants' independent claims 1 and 20. As discussed *supra*, "mixed tocotrienols" is defined in the specification as "any mixture that contains at least three of the four known tocotrienols". Specification, p. 2, paragraph [18] (emphasis added). Further, the '463 application does not teach or claim an animal diet using mixed tocotrienols alone.

The '463 application accordingly does not teach all of the limitations of independent claims 1 and 20. Therefore, Applicants submit that the claims are in proper form for allowance and respectfully request reconsideration and withdrawal of the nonstatutory obviousness-type double patenting provisional rejection.

## 2. *Application No. 11/530,075*

The Examiner provisionally rejects claims 1, 2, 12, 13, 14-16, 20, 21 and 27-29 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 11/530,075 ("the '075 application").

Applicants traverse this rejection. The '075 application does not teach all of the elements of the present invention. Appellants' independent claims 1 and 20 recite a method of improving the tissue quality of an animal, comprising feeding the animal a diet comprising mixed tocotrienols.

In contrast, the '075 application teaches and claims a method of improving the meat quality of an animal comprising feeding the animal a diet comprising oleic acid, tocols and a non-tocol anti-oxidant. The '075 application states that the dietary tocols "may be one or more of

the tocopherols or tocotrienols or a mixture of tocopherols and/or tocotrienols. The tocotrienols may be a mixture of two or more of the four known tocotrienols or a single tocotrienol." '075 Application, p. 1, paragraph [0016]. The '075 application does not teach or suggest a method of improving the tissue quality of an animal comprising feeding the animal a diet of mixed tocotrienols, as required by Appellants' independent claims 1 and 20. As discussed *supra*, "mixed tocotrienols" is defined in the specification as "any mixture that contains at least three of the four known tocotrienols". Specification, p. 2, paragraph [18] (emphasis added). Further, the '075 application does not teach or claim an animal diet using mixed tocotrienols alone.

The '075 application accordingly does not teach all of the limitations of independent claims 1 and 20. Therefore, Applicants submit that the claims are in proper form for allowance and respectfully request reconsideration and withdrawal of the nonstatutory obviousness-type double patenting provisional rejection.

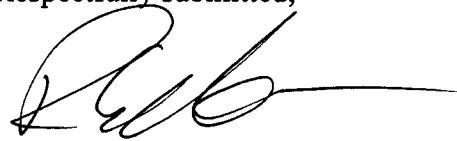
### **Conclusion**

In conclusion, Applicants submit in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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